

# **EXHIBIT 12**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ELIZABETH A. BALLY, )  
Individually and On Behalf )  
Of All Others Similarly )  
Situated, )

Plaintiffs, )

vs. )

Case No. 3:18-CV-04954-CRB

STATE FARM LIFE INSURANCE )  
COMPANY, )

Defendant. )  
\_\_\_\_\_ )

REMOTE VIDEOTAPED DEPOSITION OF SCOTT WITT  
Milwaukee, Wisconsin  
Friday, February 12, 2021

REPORTED BY: Dayna Michelle Glaysher

CSR No. 13079; RPR, CRR No. 28081

1 example a few moments ago, right?

2 A. I did.

3 Q. And do you advise your clients that -- strike  
4 that.

5 We can move on. 11:48:23

6 MR. LYTTLE: Deborah, we've been going for an  
7 hour and 45 minutes here.

8 Is now a good time for a quick break?

9 MS. STEIN: Yes, sure.

10 MR. LYTTLE: Okay. 11:48:55

11 THE VIDEOGRAPHER: Okay then. This is the  
12 end of Media Unit 1.

13 We are going off the record at 11:48 AM.

14 (Recess taken.)

15 We are going back on the record at 12:01 PM. 12:01:35

16 And this is the beginning of Media Unit 2.

17 BY MS. STEIN:

18 Q. Mr. Witt, have you authored any publications that  
19 address the methodology that you used in your work in  
20 this case? 12:01:51

21 A. Nothing outside of the documents that have been  
22 included in my reports for this case.

23 Q. I'm asking whether you authored any publications  
24 that addressed the methodology that you used in your  
25 work in this case. 12:02:16

Page 65

1 experience at Northwestern Mutual and subsequent 15, 16  
2 years of experience as a fee-only insurance advisor, and  
3 employing, you know, actuarial techniques on almost a  
4 daily basis.

5 Q. And what skills does it include?

12:11:39

6 MR. LYTLE: Object to the form.

7 THE WITNESS: Well, it would include the  
8 skill set that actuaries have. The ability to analyze  
9 complex situations, analyze risks, perform calculations  
10 as necessary. You know, it's a -- it's a wide ranging  
11 skill set.

12:12:02

12 BY MS. STEIN:

13 Q. Any other skills?

14 A. Well, I mean the ability to operate in the  
15 insurance world and to marry the insurance concepts with  
16 mathematical concepts, the ability to explain technical  
17 concepts in non-technical language hopefully. Those  
18 are -- you know, those are skill sets that actuaries  
19 have.

12:12:22

20 Q. And which of those skills did you utilize in your  
21 expert work in this case?

12:12:41

22 A. Frankly, there wasn't a lot of actuarial  
23 expertise or judgment I should say that was required.

24 I -- I would say that I needed expertise just to be able  
25 to sift through the documents, recognize what was needed

12:13:03

1 in order for me to calculate lost account value.

2 But for the most part -- for the most part it was  
3 a relatively straightforward exercise applying  
4 plaintiffs' theory, and using that theory to come up  
5 with lost account value for each policyholder. 12:13:27

6 Q. And so the skills that you utilized in your  
7 calculation were computational?

8 A. I think that's fair to say.

9 Q. Okay. So we talked about actuarial expertise and  
10 the damages calculation issue. 12:14:00

11 Any other things that you consider yourself an  
12 expert in?

13 A. I mean I have expertise in computer modeling.  
14 That's tied in with computational and actuarial  
15 expertise. You know, those skills are intertwined. 12:14:23

16 Q. Do you consider yourself an expert in SAS?

17 A. I do not. I used to be, but not now.

18 Q. And you don't consider yourself an expert in  
19 policy interpretation, do you, Mr. Witt?

20 A. I do not. 12:14:44

21 Q. Okay. And you're not offering an opinion in this  
22 case on policy interpretation?

23 A. I am not.

24 Q. Okay. And you don't consider yourself an expert  
25 in life insurance regulation, right? 12:14:52

Page 72

1 BY MS. STEIN:

2 Q. Why do you not know how to answer the question?

3 MR. LYTLE: Object to the form.

4 THE WITNESS: I developed a straightforward  
5 methodology that identified the lost account value at a 12:43:05  
6 particular point in time. It was on point. It was  
7 directly answering the question at hand.

8 BY MS. STEIN:

9 Q. So your methodology was created solely for the  
10 purpose of this litigation? 12:43:26

11 MR. LYTLE: Object to the form.

12 THE WITNESS: Yeah. I mean it's -- I guess  
13 logic is the most important ingredient that I used. And  
14 that manifested itself in the methodology that was used  
15 for this case. 12:43:55

16 BY MS. STEIN:

17 Q. Has your methodology been tested?

18 MR. LYTLE: Object to the form.

19 THE WITNESS: Oh, well, it was tested  
20 rigorously by opposition in the Vogt case in Missouri, 12:44:16  
21 and I've tested it substantially.

22 BY MS. STEIN:

23 Q. Has your methodology been subject to peer review  
24 outside of litigation?

25 A. No. 12:44:36

1 Q. Did you run it to past any of your actuarial  
2 colleagues to see what they thought?

3 A. No.

4 Q. What controlling standards did you use in  
5 applying your methodology? 12:44:54

6 MR. LYTLE: Object to the form.

7 THE WITNESS: I -- my work speaks for  
8 itself. I -- I don't have any standards to point to.  
9 It's my work product is there, everything's been turned  
10 over. The other side can verify everything I've done. 12:45:11

11 BY MS. STEIN:

12 Q. Did you rely on any literature in developing your  
13 methodology?

14 MR. LYTLE: Object to the form.

15 THE WITNESS: It is -- it is a very 12:45:31  
16 simple -- it's simultaneously simple and incredibly  
17 complex. But the complexity comes about from the data,  
18 not from the methodology itself. The methodology  
19 identifies excess, cost of insurance rates or rates  
20 where there is an excess cost of insurance above and 12:46:00  
21 beyond the underlying pricing mortality.

22 Substitutes those rates back into the -- the  
23 exact formula that is specified in the contractual  
24 language. I recalculate what the account value would've  
25 been using transactions that actually occurred using 12:46:17

Page 89

1 MS. STEIN: Thank you.

2 THE WITNESS: Yeah.

3 MR. LYTLE: If it -- if it helps you,  
4 Deborah, we are happy to take a quick break now. And if  
5 that's something that you want to -- because you're on 01:04:37  
6 that line of questioning, we can take a quick break now  
7 and try to identify that for you, if that's helpful.

8 MS. STEIN: I will want to see it. But I'm  
9 going to press on for now. So I'm fine doing it on a  
10 break. 01:04:51

11 BY MS. STEIN:

12 Q. So Mr. Witt, were you -- were you the one to  
13 decide that these were the -- the numbers, the mortality  
14 experience numbers were the numbers to use for building  
15 your model? 01:05:13

16 MR. LYTLE: Object to the form.

17 THE WITNESS: I'd say it was the -- the  
18 counsel that developed the theory of what their damages  
19 were. But my use of this specific mortality table was  
20 entirely based on State Farm's documents and testimony. 01:05:37

21 BY MS. STEIN:

22 Q. And in making that determination did you exercise  
23 your actuarial science judgment?

24 A. I didn't have to.

25 Q. Why not? 01:05:50

Page 102



1       A. I felt like my hands were tied. The -- on  
2       document after document and testimony after testimony,  
3       State Farm said that this was the pricing mortality.

4       Q. What do you mean by pricing mortality?

5       A. The mortality table that was used in the pricing       01:06:13  
6       and re-pricing exercise.

7       Q. Did you have to do any math to reach the  
8       conclusion that these were the right numbers to use?

9               MR. LYTLE: Object to the form.

10              THE WITNESS: Again, I didn't have to. It       01:06:41  
11       was -- it was self-evident. These numbers, these rates  
12       were contained in asset share testing. Multiple State  
13       Farm witnesses identified this table with the  
14       adjustments that are noted in the New Jersey actuarial  
15       memorandum as the appropriate table to represent pricing       01:07:01  
16       mortality.

17       BY MS. STEIN:

18       Q. In your experience working as an actuary, did you  
19       ever have an occasion to have to unload expenses from  
20       COI rates?   01:07:31

21              MR. LYTLE: Object to the form.

22              THE WITNESS: I have engaged in exercises  
23       that effectively do that through reverse engineering.  
24       And I try to -- I try to identify how a company is  
25       recapturing expenses and -- and how it affects the       01:07:59

1 MS. STEIN: Thank you.

2 THE WITNESS: Yeah.

3 MR. LYTLE: If it -- if it helps you,  
4 Deborah, we are happy to take a quick break now. And if  
5 that's something that you want to -- because you're on 01:04:37  
6 that line of questioning, we can take a quick break now  
7 and try to identify that for you, if that's helpful.

8 MS. STEIN: I will want to see it. But I'm  
9 going to press on for now. So I'm fine doing it on a  
10 break. 01:04:51

11 BY MS. STEIN:

12 Q. So Mr. Witt, were you -- were you the one to  
13 decide that these were the -- the numbers, the mortality  
14 experience numbers were the numbers to use for building  
15 your model? 01:05:13

16 MR. LYTLE: Object to the form.

17 THE WITNESS: I'd say it was the -- the  
18 counsel that developed the theory of what their damages  
19 were. But my use of this specific mortality table was  
20 entirely based on State Farm's documents and testimony. 01:05:37

21 BY MS. STEIN:

22 Q. And in making that determination did you exercise  
23 your actuarial science judgment?

24 A. I didn't have to.

25 Q. Why not? 01:05:50

Page 102

1           A. I felt like my hands were tied. The -- on  
2 document after document and testimony after testimony,  
3 State Farm said that this was the pricing mortality.

4           Q. What do you mean by pricing mortality?

5           A. The mortality table that was used in the pricing 01:06:13  
6 and re-pricing exercise.

7           Q. Did you have to do any math to reach the  
8 conclusion that these were the right numbers to use?

9           MR. LYTLE: Object to the form.

10           THE WITNESS: Again, I didn't have to. It 01:06:41  
11 was -- it was self-evident. These numbers, these rates  
12 were contained in asset share testing. Multiple State  
13 Farm witnesses identified this table with the  
14 adjustments that are noted in the New Jersey actuarial  
15 memorandum as the appropriate table to represent pricing 01:07:01  
16 mortality.

17 BY MS. STEIN:

18           Q. In your experience working as an actuary, did you  
19 ever have an occasion to have to unload expenses from  
20 COI rates? 01:07:31

21           MR. LYTLE: Object to the form.

22           THE WITNESS: I have engaged in exercises  
23 that effectively do that through reverse engineering.  
24 And I try to -- I try to identify how a company is  
25 recapturing expenses and -- and how it affects the 01:07:59

Page 103

1 competitiveness of a policy.

2 BY MS. STEIN:

3 Q. And did -- in doing that did you -- do you follow  
4 the same steps that you follow here?

5 MR. LYTTLE: Object to the form. 01:08:16

6 THE WITNESS: Similar, except I normally  
7 don't have the benefit of knowing what a company's  
8 pricing mortality is. And so I would use more like an  
9 industry standard to compare it to.

10 BY MS. STEIN: 01:08:36

11 Q. Now when you say that you -- you followed State  
12 Farm's -- the way they price mortality, is there  
13 anything that you didn't follow that State Farm did with  
14 respect to mortality?

15 MR. LYTTLE: Object to the form. 01:08:51

16 THE WITNESS: With respect to the use of  
17 this table, I believe that I've faithfully reproduced  
18 what was used in the original pricing. And in the  
19 re-pricing, consistent with multiple documents that were  
20 produced by State Farm, testimony of multiple witnesses, 01:09:23  
21 and perhaps more importantly, no evidence to the  
22 contrary that -- that I can recall right now that would  
23 suggest that I should've used anything else.

24 BY MS. STEIN:

25 Q. Is there anything else that State Farm did in 01:09:40

Page 104